IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.
CRIMINAL REVISION APPLICATION No.285 of 2006

Sunita Vaid (Mandrekar) ..Applicant.

Vs.

State of Maharashtra & Anr. ..Respondents.

Mr Subodh Desai, Advocate for the Applicant.

Mr K. V. Saste, APP for the Respondent No.1 - State.

None for the Respondent No.2 and 3.

CORAM: V. C. DAGA,J.
DATED: 6. 8. 2007.

P.C.:-

1. Heard learned counsel appearing for the applicant, and learned APP for the Respondent No.1-State.

2. Nobody is present on behalf of the respondent Nos. 2 and 3, though Mr Karpe had waived service for them. It was expected on the part of Mr Karpe to file Vakalatnama having waived service on behalf of the respondent Nos. 2 and 3. Since the service was waived at the time of granting "rule", it was not necessary, to effect fresh service on the respondent Nos. 2 and 3.

3. As a matter of fact, it was the

responsibility of the respondent Nos. 2 and 3 to take appropriate steps to prosecute their interest before this Court. Since nobody is present on their behalf, I have no option to proceed with the hearing of this matter.

4. Perused revision petition with documents annexed thereto.

5. The petitioner has invoked revisional jurisdiction of this Court to challenge the order dated 20.4.2006 passed in Criminal Criminal Appeal No. 9 of 2005 by the learned Joint District and Sessions Judge, Thane; ("the lower appellate Court" for short);arising out of the judgment in Summary Criminal Case No. 3261 of 2000 dated 2.2.2005 passed by the learned Judicial Magistrate, F.C. Vashi ("the trial Court" for short) whereby, the appeal came to be allowed and the judgment of the trial Court came to be set aside.

6. The applicant is the original complainant, represented by her Advocate Shri Subodh Desai, who contends that impugned order passed by the lower Appellate Court is

unsustainable and it suffers from the non-application of mind. He has invited my attention to the last para of impugned order which reads as under:

> "He did not even make the mentions about the testimonies of the defence witnesses. I think the learned Judicial Magistrate erred in holding the appellants guilty of offence under Section 323 r.w.s. 34 of I.P.C."
>
> (Emphasis supplied)

7. The learned counsel appearing on behalf of the applicant, taking me through the above para, brought to my notice that the Trial Court had actually and factually discussed the evidence of the defence witnesses in detail in paras 22, 23 and 24 of its judgment.

8. While developing the above submission, he brought to my notice the observation made by the Trial Court in para 22; wherein, the evidence of defence witness S.R. Fakir Saheb (D.W.1) has been discussed; whereas, in para 23 the evidence of D.W. 2 Uday Kakade was appreciated and in para 24 the evidence of D.W.3 Dr. Vandana, Medical Officer has been taken into account. Thus, the evidence of above three witnesses has been discussed in

detail by the Trial Court.

9. The lower appellate Court has not even bothered to look into paras 22,23 and 24 of the judgment of the Trial Court and went on to observe that the Trial Court did not even make a mention about testimonies of the defence witnesses.

10. It is thus clear that while deciding the appeal, the Lower Appellate Court has completely ignored the appreciation of evidence of the defence witnesses; done by the trial Court except making same observations in its judgment with regard to one of the defence witnesses.

11. In the above view of the matter, the learned counsel appearing for the applicant is justified in seeking remand of the matter with direction to the lower Appellate Court for consideration afresh, after hearing parties to the appeal.

12. The learned APP supported the aforesaid submission. He also prayed for remand. Consequently, impugned order is liable to be

quashed and set aside.

13. In the result, impugned order dated 20.4.2006 passed in Criminal Appeal No.9 of 2005 is set aside and the matter is remitted back to the lower Appellate Court for decision afresh after hearing parties, following the principles of natural justice.

14. All rival contentions with regard to the appeal are kept open.

15. The revision application stands disposed of with no order as to costs.

(V.C. DAGA,J.)